

WLSW  
Boye  
RECEIVED  
SACRAMENTO  
CVR WOOD  
12 FEB -3 PM 12:59

**OFFICE OF THE  
CITY ATTORNEY**

EILEEN M. TEICHERT  
CITY ATTORNEY

ASSISTANT CITY ATTORNEY  
SANDRA G. TALBOT

SUPERVISING DEPUTY CITY ATTORNEYS  
GERALD C. HICKS  
GUSTAVO L. MARTINEZ  
MATTHEW D. RUYAK  
BRETT M. WITTER

**CITY OF SACRAMENTO  
CALIFORNIA**

915 I STREET, FOURTH FLOOR  
SACRAMENTO, CA 95814-2604  
PH 916-808-5346  
FAX 916-808-7455

MAILING ADDRESS:  
P.O. BOX 1948  
SACRAMENTO, CA 95812-1948

DEPUTY CITY ATTORNEYS  
MICHAEL J. BENNER  
KOURTNEY BURDICK  
JOSEPH P. CERULLO  
SHERI M. CHAPMAN  
SARI MYERS DIERKING  
MICHAEL A. FRY  
PAUL A. GALE  
SABINA D. GILBERT  
SUSAN E. HAYES  
JEFFREY C. HEEREN  
STEVEN Y. ITAGAKI  
MARCOS A. KROFF  
GARY P. LINDSEY, JR.  
SHERYL N. PATTERSON  
JOE ROBINSON  
KATHLEEN T. ROGAN  
JANETH D. SAN PEDRO  
MICHAEL T. SPARKS  
CHANCE L. TRIMM  
LAN WANG  
DAVID S. WOMACK

February 1, 2012

California Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive #200  
Rancho Cordova, CA 95670-6114  
Attention: Wendy Wyels, Supervisor  
Compliance and Enforcement Section

Re: Dellar Landfill - City of Sacramento's Status Report

Dear Ms. Wyels:

In response to the Regional Water Quality Control Board's ("Water Board") request of January 13, 2012, the City of Sacramento ("City") offers this Status Letter. Unfortunately, despite repeated efforts on the part of the City to work cooperatively to create a joint status letter (see e-mail correspondence attached hereto as Exhibit 1), the City received no response from the Dellar Trust and was forced to provide its own status letter.

**City of Sacramento's Status Report**

The Water Board's January 13, 2012 letter is captioned "Failure To Make Progress Toward Closure, Dellar Trust Property, Sacramento County" and asserts that "Water Board staff remain extremely concerned about the lack of progress toward closing the Dellar Landfill" - a concern shared by the City.

In response to the Water Board's May 27, 2008 Cleanup and Abatement Order, the City caused the preparation of a closure design in 2008. The design was approved by the Water Board. Also in 2008, as a result of a budget deficit (which continues) and in order to implicate funds from more than a single budget period, the City requested a three year extension for compliance. In preparation for closure, in 2009 the City stock piled approximately 60,000 cubic yards of soil on the Dellar Trust Property for the purpose of using it to construct the closure plan. Additional soil was stocked piled on the City's 28<sup>th</sup> Street Landfill. Both stock piles remain

available and have been offered to the Dellar Trust for the closure of the Dellar Trust Property. In the spring of 2010, the City solicited bids for construction of the closure plan. The City received a number of bids. The construction contract was awarded to Douglas Veerkamp Engineering, the lowest responsive and responsible bidder.

Shortly after award of the contract, in May 2010, Elder Berry bushes were observed on the Dellar property. The City immediately cancelled the construction contract. A biological survey documented the presence of Elder Berry bushes with branches greater in diameter of one-inch and Elder Berry Beetles, a listed endangered species under the Endangered Species Act. Pursuant to the request of the United States Department of Fish & Wildlife, the City began preparation of a Habitat Conservation Plan (HCP). The City's February 1, 2011, quarterly status summarizes efforts by the City to complete the HCP. Apparently dissatisfied with the need for an HCP, the Dellar Trust surreptitiously prepared an alternative design which it unveiled to the Water Board (and the City) at the meeting of January 6, 2011. The Dellar Trust agreed to take the lead on the closure of the property and presented an alternative schedule showing the work to be completed by the summer of 2011.

In early 2011, the Dellar Trust and City requested an extension in order for the City to apply for and hopefully be awarded, a grant from CALRECYCLE to help offset the closure cost. The requested extension was granted with the understanding the Dellar Trust, as owners of the property and the agreed lead on the project, would show progress over the summer. In December 2011, the City secured the grant in the amount of \$720,000. The City informed the Dellar Trust and requested copies of the construction plans, bid documents and construction agreement. CALRECYCLE requires these documents in order for the City to utilize grant funding. Despite constant requests for these documents, requests which began on October 6, 2011 (see Exhibit 2), the Dellar Trust has consistently refused to respond or provide the requested documents. Due to the lack of cooperation by the Dellar Trust, the City was forced to utilize formal discovery (i.e., a Demand for Production of Documents) in an effort to obtain the requested documents. Again, the Dellar Trust failed to respond to the demand. In order to comply with the Court's meet and confer requirement, the City wrote to the Dellar Trust's attorney about the failed response and asked that the documents be provided. (See Exhibit 3.) The Dellar Trust ignored the letter. Ultimately, the City was forced to file a motion to compel in order to get the documents. That motion was granted on January 12, 2012. (See Exhibit 4.) However, the City has still not received many of the requested documents.

Because the Dellar Trust ignored the City's requests for the contract and bid documents, the City had to subpoena the documents. When one of those companies, Kleinfelder West, failed to respond to the subpoena, the City contacted Kleinfelder. Kleinfelder employee, Vanessa Boyer, told the City that "their client's attorney" was "taking care of" the issue with the subpoena and she was informed he had already spoken to the City. Ms. Boyer confirmed that she was referring to Jeff Scharff, the Dellar Trust's attorney. Unfortunately, no such conversation with the City had occurred with Mr. Scharff. The Trust had not only failed to provide the requested documents in response to numerous City requests, it had interfered with the City's attempt to get the documents through subpoena, and had forced the City to file a motion to compel instead of timely responding to discovery.

The City has also remained concerned about the absence of any notice to the Department of Fish & Wildlife of the alternative design. From the City's perspective, it made sense for the Dellar Trust to provide such notice as it could more easily provide an explanation as to why its design did not result in any "take" and therefore no HCP was necessary. Despite constant requests, the Dellar Trust consistently declined to send such notice - even inadvertently sending an e-mail to the City (and referring to the City) stating: "They are bound and determined aren't they. Maybe we should have a sidebar with the Water Board?"). Becoming increasingly alarmed, the City sent a letter to the Department of Fish & Wildlife apprising them of the changed design on January 18, 2012 (See Exhibit 5).

From the outset and despite difficult budget issues, the City has made every effort to comply with the Water Board's directive. The City remains ready, willing and able to pay its share of the closure costs and to cooperate in every way in order to expeditiously close the site. The City has set aside funds to pay for its share of the closure cost and agreed to provide right-of-entry across the 28<sup>th</sup> Street Landfill during the closure construction period. The City has stockpiled the soil needed. The City has offered help with respect to access, insurance issues, use of fire hydrants and addressing the apparent use of the property by the homeless. Unfortunately, as the foregoing record details and for reasons which escape the City, what was once a cooperative effort has become increasingly adversarial and non-cooperative - at the expense of endangering the closure schedule. Only after receiving the Water Board's January 13, 2012 letter has the Dellar Trust started to make efforts to begin the closure - finally issuing a notice to proceed to its contractor on January 27, 2012. In summary, the City was and is fully prepared to move forward with the closure plan as agreed, but not being the owner of the property, the owner of the design or in control of the construction, is unable to do so. As the non-owner, co-responsible party for the closure of the Dellar Trust property, the City submits it has made all possible efforts to complete this project and that any imposition of penalties against the City would be patently unfair.

Very truly yours,

EILEEN M. TEICHERT  
City Attorney

  
GERALD C. HICKS  
Supervising Deputy City Attorney

GCH/dls

Cc. David Boyers, Office of Enforcement, State Water Resources Control Board (w/enclosures)  
Steve Harriman, Integrated Waste General Manager, City of Sacramento (w/o enclosures)  
Reina Schwartz, Director, General Services, City of Sacramento (w/o enclosures)  
Jeffery J. Scharff, Attorney for Dellar Survivor's Trust (w/enclosures)



## Jerry Hicks

---

**From:** Jerry Hicks  
**Sent:** Thursday, January 19, 2012 10:13 AM  
**To:** 'Jeffory J. Scharff'; ktraugh@scharff.us  
**Cc:** Kathleen Rogan; Marty Strauss; Steve Harriman  
**Subject:** WB's letter of January 13

Jeff, I assumed you received the WB's letter of January 13 expressing concern over the lack of progress of closure efforts and ordering the parties to submit a joint status report. With the lack of cooperation, I think a true joint status report (where both parties agree to the content) will not work. My suggestion is that we include a joint neutral statement as to the current status that is acceptable to both parties and a separate statement from each.

Gerald (Jerry) Hicks, Supervising Deputy City Attorney  
Sacramento City Attorney's Office  
(916) 808-5346 main line  
(916) 808-7455 fax  
[JHicks@cityofsacramento.org](mailto:JHicks@cityofsacramento.org)

This email contains material that is confidential and/or privileged under the work product doctrine, and attorney-client or official information privileges, for the sole use of the intended recipient. Any reliance on or review of this email by anyone other than the intended recipient, or any distribution or forwarding of this email, without express written permission of the City Attorney is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email, and destroy all copies of the original message.

## **Jerry Hicks**

---

**From:** Jerry Hicks  
**Sent:** Tuesday, January 31, 2012 9:40 AM  
**To:** 'Jeffory J. Scharff'  
**Cc:** Kathleen Rogan  
**Subject:** RE: Construction Update

Jeff, we need to have a "joint status" letter out by tomorrow. Are you putting something together?

Jerry Hicks, Supervising Deputy City Attorney

This email contains material that is confidential and/or privileged under the work product doctrine, and attorney-client or official information privileges, for the sole use of the intended recipient. Any reliance on or review of this email by anyone other than the intended recipient, or any distribution or forwarding of this email, without express written permission of the City Attorney is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email, and destroy all copies of the original message.

---

**From:** Jeffory J. Scharff [<mailto:jscharff@scharff.us>]  
**Sent:** Monday, January 30, 2012 10:18 AM  
**To:** 'Jeffory J. Scharff'; Jerry Hicks  
**Cc:** [tcrandall@kleinfelder.com](mailto:tcrandall@kleinfelder.com); 'Bruce D. Barnett, Ph.D.'; 'Karen Traugh'; [Tdelfrate@waterboards.ca.gov](mailto:Tdelfrate@waterboards.ca.gov); Kathleen Rogan  
**Subject:** RE: Construction Update

Sorry in my haste I failed to also say to have Community Services or the P.D. coordinate with me. I will be reachable by cell phone. That number is 916/335-7223. My instructions from the Trustee are to make myself available to assist in any way that I can.

Let me know what I can do to help resolve the matter.

Thank you,

Jeff

---

**From:** Jeffory J. Scharff [<mailto:jscharff@scharff.us>]  
**Sent:** Monday, January 30, 2012 10:08 AM  
**To:** 'Jerry Hicks'  
**Cc:** [tcrandall@kleinfelder.com](mailto:tcrandall@kleinfelder.com); 'Bruce D. Barnett, Ph.D.'; 'Karen Traugh'; [Tdelfrate@waterboards.ca.gov](mailto:Tdelfrate@waterboards.ca.gov); 'Kathleen Rogan'  
**Subject:** Construction Update

Jerry:

This morning our engineer, contractor and biologist met on site for a pre-construction meeting. Tim Crandall advises that the homeless encampments established within the Elderberry Bushes remain. Veer Kamp was on site along with our consulting biologist, Dr. Bruce Barnett. Dr. Barnett was to review the protocol for work in proximity to the bushes. With the homeless camping in the bushes they cannot be fenced off. Tim has correctly advised Veer Kamp that unless and until the City removes the encampments the liability it too great to proceed and

## **Jerry Hicks**

---

**From:** Jerry Hicks  
**Sent:** Tuesday, January 31, 2012 4:19 PM  
**To:** 'Jeffory J. Scharff'; Michael Benner  
**Cc:** Kathleen Rogan; Karl Kurka; Tdelfrate@waterboards.ca.gov; 'Karen Traugh'  
**Subject:** RE: Construction Update

Jeff, this is the third e-mail on this subject – please let me know what you intend to include in the joint status report required by the Water Board.

Jerry Hicks, Supervising Deputy City Attorney

This email contains material that is confidential and/or privileged under the work product doctrine, and attorney-client or official information privileges, for the sole use of the intended recipient. Any reliance on or review of this email by anyone other than the intended recipient, or any distribution or forwarding of this email, without express written permission of the City Attorney is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email, and destroy all copies of the original message.

---

**From:** Jeffory J. Scharff [mailto:jscharff@scharff.us]  
**Sent:** Tuesday, January 31, 2012 3:45 PM  
**To:** Michael Benner; Jerry Hicks  
**Cc:** Kathleen Rogan; Karl Kurka; Tdelfrate@waterboards.ca.gov; 'Karen Traugh'  
**Subject:** RE: Construction Update

Thank you very much

---

**From:** Michael Benner [mailto:MBenner@cityofsacramento.org]  
**Sent:** Tuesday, January 31, 2012 2:43 PM  
**To:** 'Jeffory J. Scharff'; Jerry Hicks  
**Cc:** Kathleen Rogan; Karl Kurka; Tdelfrate@waterboards.ca.gov; 'Karen Traugh'  
**Subject:** RE: Construction Update

Jeff. Just got your message.

Sac Police already went out to the site, and reported 3 separate campsites. 2 were in the process of being packed up already. The third was vacant with two not-so-nice dogs tied up nearby. Because it was vacant, the Officers posted the campsite for clean-up, and tried to personally notify the owner of the campsite (whom they know...), but she was not at her usual "hang-out." Officer will return in the morning to see if the site has been vacated. If not, it will be removed, and the dogs will be taken by Animal Control.

-Mike Benner

Michael J. Benner,  
Senior Deputy City Attorney  
Sacramento City Attorney's Office  
915 I St., Fourth Floor  
Sacramento, CA 95814  
Phone: (916) 808-5346

This morning our engineer, contractor and biologist met on site for a pre-construction meeting. Tim Crandall advises that the homeless encampments established within the Elderberry Bushes remain. Veer Kamp was on site along with our consulting biologist, Dr. Bruce Barnett.

Dr. Barnett was to review the protocol for work in proximity to the bushes. With the homeless camping in the bushes they cannot be fenced off. Tim has correctly advised Veer Kamp that unless and until the City removes the encampments the liability is too great to proceed and their continued presence will result in a delay in the commencement of construction. A construction delay will also result in the contractor making claims against the Trust that will in turn under the circumstances result in the Trust making claims against the City.

All of it can be avoided with the City's assistance to remove the illegal homeless encampments on the property.

Thank you for your assistance

Jeffory J. Scharff, Esq.  
2625 Fair Oaks Blvd., Suite 7  
Sacramento, CA 95864  
Telephone: 916/485-5700  
Facsimile: 916/485-5912  
e-mail: [jscharff@scharff.us](mailto:jscharff@scharff.us)

\*\*\*\*\*  
Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.  
\*\*\*\*\*



## **Jerry Hicks**

---

**From:** Jerry Hicks  
**Sent:** Wednesday, February 01, 2012 10:56 AM  
**To:** 'Jeffory J. Scharff'; Michael Benner  
**Cc:** Kathleen Rogan; Karl Kurka; Tdelfrate@waterboards.ca.gov; 'Karen Traugh'  
**Subject:** RE: Construction Update

Jeff, please let me know the status of your input for the joint status letter.

Jerry Hicks, Supervising Deputy City Attorney

This email contains material that is confidential and/or privileged under the work product doctrine, and attorney-client or official information privileges, for the sole use of the intended recipient. Any reliance on or review of this email by anyone other than the intended recipient, or any distribution or forwarding of this email, without express written permission of the City Attorney is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email, and destroy all copies of the original message.

---

**From:** Jeffory J. Scharff [mailto:jscharff@scharff.us]  
**Sent:** Tuesday, January 31, 2012 3:45 PM  
**To:** Michael Benner; Jerry Hicks  
**Cc:** Kathleen Rogan; Karl Kurka; Tdelfrate@waterboards.ca.gov; 'Karen Traugh'  
**Subject:** RE: Construction Update

Thank you very much

---

**From:** Michael Benner [mailto:MBenner@cityofsacramento.org]  
**Sent:** Tuesday, January 31, 2012 2:43 PM  
**To:** 'Jeffory J. Scharff'; Jerry Hicks  
**Cc:** Kathleen Rogan; Karl Kurka; Tdelfrate@waterboards.ca.gov; 'Karen Traugh'  
**Subject:** RE: Construction Update

Jeff. Just got your message.

Sac Police already went out to the site, and reported 3 separate campsites. 2 were in the process of being packed up already. The third was vacant with two not-so-nice dogs tied up nearby. Because it was vacant, the Officers posted the campsite for clean-up, and tried to personally notify the owner of the campsite (whom they know...), but she was not at her usual "hang-out." Officer will return in the morning to see if the site has been vacated. If not, it will be removed, and the dogs will be taken by Animal Control.

-Mike Benner

Michael J. Benner,  
Senior Deputy City Attorney  
Sacramento City Attorney's Office  
915 I St., Fourth Floor  
Sacramento, CA 95814  
Phone: (916) 808-5346

This morning our engineer, contractor and biologist met on site for a pre-construction meeting. Tim Crandall advises that the homeless encampments established within the Elderberry Bushes remain. Veer Kamp was on site along with our consulting biologist, Dr. Bruce Barnett.

Dr. Barnett was to review the protocol for work in proximity to the bushes. With the homeless camping in the bushes they cannot be fenced off. Tim has correctly advised Veer Kamp that unless and until the City removes the encampments the liability is too great to proceed and their continued presence will result in a delay in the commencement of construction. A construction delay will also result in the contractor making claims against the Trust that will in turn under the circumstances result in the Trust making claims against the City.

All of it can be avoided with the City's assistance to remove the illegal homeless encampments on the property.

Thank you for your assistance

Jeffory J. Scharff, Esq.  
2625 Fair Oaks Blvd., Suite 7  
Sacramento, CA 95864  
Telephone: 916/485-5700  
Facsimile: 916/485-5912  
e-mail: [jscharff@scharff.us](mailto:jscharff@scharff.us)

\*\*\*\*\*  
Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.  
\*\*\*\*\*



## **Jerry Hicks**

---

**From:** Jerry Hicks  
**Sent:** Friday, December 09, 2011 12:06 PM  
**To:** 'Jeffory J. Scharff'  
**Cc:** 'Karen Traugh'; Kathleen Rogan  
**Subject:** RE: Dellar Parcel

I need a copy of the contract. Kathleen is in the process of preparing a motion to compel.

Jerry Hicks, Supervising Deputy City Attorney

This email contains material that is confidential and/or privileged under the work product doctrine, and attorney-client or official information privileges, for the sole use of the intended recipient. Any reliance on or review of this email by anyone other than the intended recipient, or any distribution or forwarding of this email, without express written permission of the City Attorney is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email, and destroy all copies of the original message.

---

**From:** Jeffory J. Scharff [<mailto:jscharff@scharff.us>]  
**Sent:** Friday, December 09, 2011 11:37 AM  
**To:** Jerry Hicks  
**Cc:** 'Karen Traugh'  
**Subject:** Dellar Parcel

Jerry:

The City has as an apparent condition of issuing the required grading permit made request for a certificate of insurance. I am advised that the contractor through their insurance broker is unable to obtain such a certificate.

We fail under the circumstances to understand the necessity of insurance for the City's inspectors. Is this a requirement applied other construction projects within the City or some unique to the Dellar project.

At any rate until the mater can be resolved the Trust is unable to commence construction as required by the Water Board. I would like to see what can be done to address the matter. The Trustee is concerned that the work is being held hostage by the City.

Are you available next week Monday to meet and discuss?

Jeffory J. Scharff, Esq.  
2625 Fair Oaks Blvd., Suite 7  
Sacramento, CA 95864  
Telephone: 916/485-5700  
Facsimile: 916/485-5912  
e-mail: [jscharff@scharff.us](mailto:jscharff@scharff.us)

\*\*\*\*\*  
Confidentiality Notice: This e-mail message, including any  
attachments, is for the sole use of the intended recipient(s)  
and may contain confidential and privileged information. Any  
unauthorized review, use, disclosure or distribution is prohibited.  
If you are not the intended recipient, please contact the sender  
by reply e-mail and destroy all copies of the original message.  
\*\*\*\*\*

## **Jerry Hicks**

---

**From:** Jerry Hicks  
**Sent:** Thursday, November 17, 2011 4:32 PM  
**To:** 'Karen Traugh'; 'Todd Del Frate'  
**Cc:** 'Doug Daggs'; [wwyels@waterboards.ca.gov](mailto:wwyels@waterboards.ca.gov); [Dboyers@waterboards.ca.gov](mailto:Dboyers@waterboards.ca.gov); [rbletcher@aol.com](mailto:rbletcher@aol.com); Marty Strauss; 'Jeffory Scharff'; Kathleen Rogan  
**Subject:** RE: Sylvia Dellar Survivor's Trust - Dellar Property

Please forward a copy of the bid documents and executed contract.

Jerry Hicks, Supervising Deputy City Attorney

This email contains material that is confidential and/or privileged under the work product doctrine, and attorney-client or official information privileges, for the sole use of the intended recipient. Any reliance on or review of this email by anyone other than the intended recipient, or any distribution or forwarding of this email, without express written permission of the City Attorney is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email, and destroy all copies of the original message.

---

**From:** Karen Traugh [<mailto:ktraugh@scharff.us>]  
**Sent:** Thursday, November 17, 2011 4:26 PM  
**To:** 'Todd Del Frate'  
**Cc:** 'Doug Daggs'; [wwyels@waterboards.ca.gov](mailto:wwyels@waterboards.ca.gov); [Dboyers@waterboards.ca.gov](mailto:Dboyers@waterboards.ca.gov); Jerry Hicks; [rbletcher@aol.com](mailto:rbletcher@aol.com); Marty Strauss; 'Jeffory Scharff'  
**Subject:** Sylvia Dellar Survivor's Trust - Dellar Property

Mr. Scharff asked that I forward the attached letter to you. Please contact us if you have any questions.

Karen Traugh, Paralegal  
JEFFORY J. SCHARFF, ESQ.  
2625 Fair Oaks Blvd., Ste. 7  
Sacramento, CA 95864  
Main: (916) 485-5700  
Fax: (916) 485-5912

[ktraugh@scharff.us](mailto:ktraugh@scharff.us)

\*\*\*\*\*  
Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.  
\*\*\*\*\*

## Jerry Hicks

---

**From:** Jerry Hicks  
**Sent:** Tuesday, November 15, 2011 9:08 PM  
**To:** Jeffory J. Scharff  
**Cc:** Karen Traugh; Kathleen Rogan  
**Subject:** Re: A Question

Why is the contractoor being changed and where are the bid docs?

Sent from my iPad

On Nov 15, 2011, at 5:18 PM, "Jeffory J. Scharff" <[jscharff@scharff.us](mailto:jscharff@scharff.us)> wrote:

Tim Crandall spoke with Eva Bravo at the City of Sacramento regarding changing the contractor from Western to Veer Kamp on the Partial Notice to Proceed.

Ms. Bravo is now requesting a certificate of insurance from Veer Kamp listing the City of Sacramento as an additional insured on their general liability policy.

Forgive me but what is the basis of the City's authority to make such a request. It strikes me as highly unusual. Perhaps you can shed some light on matter.

Thank you

Jeffory J. Scharff, Esq.  
2625 Fair Oaks Blvd., Suite 7  
Sacramento, CA 95864  
Telephone: 916/485-5700  
Facsimile: 916/485-5912  
e-mail: [jscharff@scharff.us](mailto:jscharff@scharff.us)

\*\*\*\*\*  
Confidentiality Notice: This e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.  
\*\*\*\*\*

**Jerry Hicks**

---

**From:** Jerry Hicks  
**Sent:** Sunday, October 16, 2011 5:06 PM  
**To:** Jeffory J. Scharff  
**Cc:** Marty Strauss; Kathleen Rogan  
**Subject:** Re: dellar

Sure but I think to make it worthwhile we need executed contract and bid docs

Gerald C. Hicks  
Sent from my iPhone  
916.606.9243

On Oct 16, 2011, at 4:57 PM, "Jeffory J. Scharff" <[jscharff@scharff.us](mailto:jscharff@scharff.us)> wrote:

I have an internal rewrite that will circulate to Western tomorrow. Dissemination will be dependent on their reply.

I'm through guessing when.

We were also talking about meeting this week. Is that still a possibility?

---

**From:** Jerry Hicks [<mailto:JHicks@cityofsacramento.org>]  
**Sent:** Friday, October 14, 2011 3:39 PM  
**To:** 'Jeffory J. Scharff'  
**Cc:** Marty Strauss; Kathleen Rogan  
**Subject:** dellar

Any update on ETA for bid docs and contract?

Gerald (Jerry) Hicks, Supervising Deputy City Attorney

Sacramento City Attorney's Office



(916) 808-5346 main line

(916) 808-7455 fax

[JHicks@cityofsacramento.org](mailto:JHicks@cityofsacramento.org)

This email contains material that is confidential and/or privileged under the work product doctrine, and attorney-client or official information privileges, for the sole use of the intended recipient. Any reliance on or review of this email by anyone other than the intended recipient, or any distribution or forwarding of this email, without express written permission of the City Attorney is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email, and destroy all copies of the original message.

## **Jerry Hicks**

---

**From:** Jerry Hicks  
**Sent:** Friday, October 14, 2011 3:39 PM  
**To:** 'Jeffory J. Scharff'  
**Cc:** Marty Strauss; Kathleen Rogan  
**Subject:** dellar

Any update on ETA for bid docs and contract?

Gerald (Jerry) Hicks, Supervising Deputy City Attorney  
Sacramento City Attorney's Office  
(916) 808-5346 main line  
(916) 808-7455 fax  
[JHicks@cityofsacramento.org](mailto:JHicks@cityofsacramento.org)

This email contains material that is confidential and/or privileged under the work product doctrine, and attorney-client or official information privileges, for the sole use of the intended recipient. Any reliance on or review of this email by anyone other than the intended recipient, or any distribution or forwarding of this email, without express written permission of the City Attorney is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email, and destroy all copies of the original message.

## **Jerry Hicks**

---

**From:** Jerry Hicks  
**Sent:** Thursday, October 13, 2011 11:03 AM  
**To:** 'Jeffory J. Scharff'  
**Cc:** Marty Strauss; Kathleen Rogan  
**Subject:** Dellar

Jeff, can you give me an ETA on the bids docs and the contract. As you know, both the City and Cal Recycle need to see these as soon as possible. I also think it is a good idea to sit down and straighten out payment issues. In addition, the City remains very concerned about apprising Fish & Wildlife about the revised design. Let me know. Thx

Gerald (Jerry) Hicks, Supervising Deputy City Attorney  
Sacramento City Attorney's Office  
(916) 808-5346 main line  
(916) 808-7455 fax  
[JHicks@cityofsacramento.org](mailto:JHicks@cityofsacramento.org)

This email contains material that is confidential and/or privileged under the work product doctrine, and attorney-client or official information privileges, for the sole use of the intended recipient. Any reliance on or review of this email by anyone other than the intended recipient, or any distribution or forwarding of this email, without express written permission of the City Attorney is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email, and destroy all copies of the original message.

## Jerry Hicks

---

**From:** Jerry Hicks  
**Sent:** Friday, October 07, 2011 10:23 AM  
**To:** 'Jeffory J Scharff'; Marty Strauss  
**Cc:** Karen Traugh; Timothy Crandall  
**Subject:** RE: Cellar

Okay.

Jerry Hicks, Supervising Deputy City Attorney

This email contains material that is confidential and/or privileged under the work product doctrine, and attorney-client or official information privileges, for the sole use of the intended recipient. Any reliance on or review of this email by anyone other than the intended recipient, or any distribution or forwarding of this email, without express written permission of the City Attorney is strictly prohibited.  
If you are not the intended recipient, please contact the sender by reply email, and destroy all copies of the original message.

-----Original Message-----

**From:** Jeffory J Scharff [<mailto:jscharff@scharff.us>]  
**Sent:** Friday, October 07, 2011 10:19 AM  
**To:** Jerry Hicks; Marty Strauss  
**Cc:** Karen Traugh; Timothy Crandall  
**Subject:** Re: Cellar

Sorry I didn't get that you were looking for those. They are at the moment a work in progress. We do not have a final contract yet. I am out of the office so can't get them to you at the moment. I will try to get them to you this afternoon when I get through meetings, conference calls, court appearances but at the rate I'm going I may not get them to you until Monday.

On 10/7/11 9:57 AM, "Jerry Hicks" <[JHicks@cityofsacramento.org](mailto:JHicks@cityofsacramento.org)> wrote:

> Thx Jeff, got the stuff. Didn't see bid docs, bids or contract. Do you  
> have  
> those?  
>  
> Jerry Hicks, Supervising Deputy City Attorney  
>  
> This email contains material that is confidential and/or privileged  
> under the  
> work product doctrine, and attorney-client or official information  
> privileges,  
> for the sole use of the intended recipient. Any reliance on or review  
> of this  
> email by anyone other than the intended recipient, or any distribution  
> or  
> forwarding of this email, without express written permission of the  
> City  
> Attorney is strictly prohibited. If you are not the intended

recipient, please

> contact the sender by reply email, and destroy all copies of the original message.

>

>

> -----Original Message-----

> From: Jeffory J. Scharff [<mailto:jscharff@scharff.us>]

> Sent: Thursday, October 06, 2011 3:39 PM

> To: Marty Strauss; Jerry Hicks

> Cc: [ktraugh@scharff.us](mailto:ktraugh@scharff.us); [TCrandall@kleinfelder.com](mailto:TCrandall@kleinfelder.com)

> Subject: RE: Cellar

>

> When we drop this off

> make note of Appendix E which discusses the Q.A.

>

> We can if need be revise the Dellar Trust contract with Western to be prevailing wage. It adds \$135,000.00 to the job cost.

>

> -----Original Message-----

> From: Marty Strauss [<mailto:MStrauss@cityofsacramento.org>]

> Sent: Thursday, October 06, 2011 2:56 PM

> To: Jerry Hicks; Jeffory J Scharff

> Subject: RE: Cellar

>

> And a description of the inspection process to maintain the Quality Assurances.

>

> The grant contract will define what will be paid for and what will not. It

> will also define requirements such as prevailing wage, etc.

>

> Marty

>

> -----Original Message-----

> From: Jerry Hicks

> Sent: Thursday, October 06, 2011 2:52 PM

> To: Jeffory J Scharff

> Cc: Marty Strauss

> Subject: Cellar

>

> Jeff, we need a copy of the bid docs and plans for Cal Recycle

>

>

> Gerald C. Hicks, Esq.

> Sent from my iPhone

> 916.606.9243

>

>

>

>

>

## **Jerry Hicks**

---

**From:** Jerry Hicks  
**Sent:** Friday, October 07, 2011 9:57 AM  
**To:** 'Jeffory J. Scharff'; Marty Strauss  
**Cc:** ktraugh@scharff.us; TCrandall@kleinfelder.com  
**Subject:** RE: Cellar

Thx Jeff, got the stuff. Didn't see bid docs, bids or contract. Do you have those?

Jerry Hicks, Supervising Deputy City Attorney

This email contains material that is confidential and/or privileged under the work product doctrine, and attorney-client or official information privileges, for the sole use of the intended recipient. Any reliance on or review of this email by anyone other than the intended recipient, or any distribution or forwarding of this email, without express written permission of the City Attorney is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email, and destroy all copies of the original message.

-----Original Message-----

**From:** Jeffory J. Scharff [<mailto:jscharff@scharff.us>]  
**Sent:** Thursday, October 06, 2011 3:39 PM  
**To:** Marty Strauss; Jerry Hicks  
**Cc:** [ktraugh@scharff.us](mailto:ktraugh@scharff.us); [TCrandall@kleinfelder.com](mailto:TCrandall@kleinfelder.com)  
**Subject:** RE: Cellar

When we drop this off  
make note of Appendix E which discusses the Q.A.

We can if need be revise the Dellar Trust contract with Western to be prevailing wage. It adds \$135,000.00 to the job cost.

-----Original Message-----

**From:** Marty Strauss [<mailto:MStrauss@cityofsacramento.org>]  
**Sent:** Thursday, October 06, 2011 2:56 PM  
**To:** Jerry Hicks; Jeffory J Scharff  
**Subject:** RE: Cellar

And a description of the inspection process to maintain the Quality Assurances.

The grant contract will define what will be paid for and what will not.

It  
will also define requirements such as prevailing wage, etc.

Marty

-----Original Message-----

**From:** Jerry Hicks  
**Sent:** Thursday, October 06, 2011 2:52 PM  
**To:** Jeffory J Scharff  
**Cc:** Marty Strauss  
**Subject:** Cellar

Jeff, we need a copy of the bid docs and plans for Cal Recycle

Gerald C. Hicks, Esq.  
Sent from my iPhone  
916.606.9243

## **Jerry Hicks**

---

**From:** Jerry Hicks  
**Sent:** Thursday, October 06, 2011 2:52 PM  
**To:** Jeffory J Scharff  
**Cc:** Marty Strauss  
**Subject:** Cellar

Jeff, we need a copy of the bid docs and plans for Cal Recycle

Gerald C. Hicks, Esq.  
Sent from my iPhone  
916.606.9243







**OFFICE OF THE  
CITY ATTORNEY**

EILEEN M. TEICHERT  
CITY ATTORNEY  
ASSISTANT CITY ATTORNEY  
SANDRA G. TALBOTT  
SUPERVISING DEPUTY CITY ATTORNEYS  
GERALD C. HICKS  
GUSTAVO L. MARTINEZ  
MATTHEW D. RUYAK  
BRETT M. WITTER

**CITY OF SACRAMENTO  
CALIFORNIA**

915 I STREET, FOURTH FLOOR  
SACRAMENTO, CA 95814-2604  
PH 916-808-5346  
FAX 916-808-7455

MAILING ADDRESS:  
P.O. BOX 1948  
SACRAMENTO, CA 95812-1948

DEPUTY CITY ATTORNEYS  
MICHAEL J. BENNER  
KOURTNEY BURDICK  
JOSEPH P. CERULLO  
SHERI M. CHAPMAN  
SARI MYERS DIERKING  
MICHAEL A. FRY  
PAUL A. GALE  
SABINA D. GILBERT  
SUSAN E. HAYES  
JEFFREY C. HEEREN  
STEVEN Y. ITAGAKI  
MARCOS A. KROFF  
GARY P. LINDSEY, JR.  
SHERYL N. PATTERSON  
JOE ROBINSON  
KATHLEEN T. ROGAN  
JANETH D. SAN PEDRO  
MICHAEL T. SPARKS  
CHANCE L. TRIMM  
LAN WANG  
DAVID S. WOMACK

December 7, 2011

*Sent via facsimile*

Jeffory J. Scharff, Esq.  
Law Offices of Jeffory J. Scharff  
2625 Fair Oaks Blvd., Suite 7  
Sacramento, CA 95864

Re: City of Sacramento v. Sylvia Dellar Survivor's Trust v. City of  
Sacramento Superior Court Case No. 34-2009-00067001

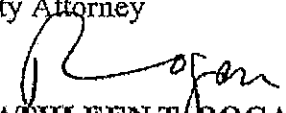
Dear Mr. Scharff:

The City served defendant with a demand for production of documents and special interrogatories on October 25, 2011. Both were due on November 29<sup>th</sup> and are now one week overdue. As you know, the City has been asking for the contract documents for several months to no avail. The Water Board has recently asked for a status and we were unable to provide one because of the missing information.

If you need more time to respond, please contact me so that we can work something out. Otherwise, please forward the responses and the documents at your earliest convenience.

Very truly yours,

EILEEN M. TEICHERT  
City Attorney

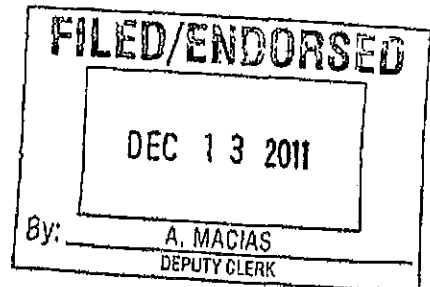
  
KATHLEEN T. ROGAN  
Senior Deputy City Attorney

KTR/crc



1 EILEEN M. TEICHERT, City Attorney (SBN 167027)  
2 KATHLEEN T. ROGAN, Senior Deputy City Attorney (SBN 186055)  
3 CITY OF SACRAMENTO  
4 Mailing: P.O. Box 1948, Sacramento, CA 95812-1948  
5 Office: 915 I Street, 4th Floor, Sacramento, CA 95814  
6 Telephone: (916) 808-5346  
7 Telecopier: (916) 808-7455

8 Attorneys for Plaintiff, CITY OF SACRAMENTO



9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF SACRAMENTO

11 CITY OF SACRAMENTO

12 Plaintiff,

13 vs.

14 DOUGLAS DAGGS, as Trustee of the SYLVIA  
15 DELLAR SURVIVOR'S TRUST and DOES 1-  
16 100 INCLUSIVE

17 Defendants.

Case No.: 34-2009-00067001

Filing Type: Motions

Filing Name: Motion to Compel Discovery

NOTICE OF MOTION AND MOTION TO  
COMPEL DEFENDANT TO RESPOND  
TO SPECIAL INTERROGATORIES,  
REQUEST FOR PRODUCTION OF  
DOCUMENTS, SETS NO. ONE; AND  
REQUEST FOR MONETARY  
SANCTIONS IN THE AMOUNT OF  
\$1240; MEMORANDUM OF POINTS  
AND AUTHORITIES IN SUPPORT  
THEREOF; SUPPORTING  
DECLARATION OF KATHLEEN T.  
ROGAN

Date: January 12, 2012

Time: 2:00 p.m.

Dept: 53

Location: 800 9<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Sacramento, CA 95814

Judge: Honorable David I. Brown

Action Filed: December 21, 2009

Trial Date: Not yet set

21  
22  
23  
24  
25  
26  
27  
28  
1  
NOTICE OF MOTION AND MOTION TO COMPEL DEFENDANT TO RESPOND TO SPECIAL  
INTERROGATORIES, REQUEST FOR PRODUCTION OF DOCUMENTS, SETS NO. ONE; AND REQUEST FOR  
MONETARY SANCTIONS IN THE AMOUNT OF \$1240; MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT THEREOF; SUPPORTING DECLARATION OF KATHLEEN T. ROGAN

1 TO: DEFENDANT AND ITS ATTORNEY OF RECORD:

2 NOTICE IS HEREBY GIVEN that at the above time and date, plaintiff City of Sacramento  
3 ("City") will move this Court for an order compelling Defendant DOUGLAS DAGGS, as Trustee of  
4 the SYLVIA DELLAR SURVIVOR'S TRUST (Defendant) to fully respond to the City's Special  
5 Interrogatories, Set Number One, and Request for Production of Documents, Set Number One.

6 This motion will be made on the grounds that Defendant failed to respond to Special  
7 Interrogatories and Request for Production of Documents, Sets Number One.

8 This motion will be based on this notice of motion, on the memorandum of points and  
9 authorities, the supporting Declaration of Kathleen T. Rogan and attached exhibits, on the complete  
10 files and records in this action, and on such oral and documentary evidence as may be presented at the  
11 hearing of said motion.

12 Pursuant to Local Rule 3.04, the court will make a tentative ruling on the merits of this matter  
13 by 2:00 p.m., the court day before the hearing. You may access and download the court's ruling from  
14 the court's website at <http://www.saccourt.ca.gov>. If you do not have online access, you may obtain  
15 the tentative ruling over the telephone by calling (916) 874-8142 and a deputy clerk will read the  
16 ruling to you. If you wish to request oral argument, you must contact the courtroom clerk at (916)  
17 874-7858 (Department 53) or (916) 874-7848 (Department 54) and the opposing party before 4:00  
18 p.m. the court day before the hearing. If you do not call the court and the opposing party by 4:00 p.m.  
19 on the court day before the hearing, no hearing will be held. (See Local Rule 3.04(D).)

20  
21 DATED: December 13, 2011

EILEEN M. TEICHERT,

City Attorney

22  
23  
24 By: 

KATHLEEN T. ROGAN

Senior Deputy City Attorney

25  
26 Attorneys for Plaintiff

27 CITY OF SACRAMENTO

1 **PROOF OF SERVICE**

2 **CASE NAME:** City of Sacramento v. Sylvia Dellar Survivor's Trust v. City of  
3 **COURT:** Sacramento County Superior Court  
4 **CASE NUMBER:** 34-2009-00067001

5 I declare that:

6 I am employed in the County of Sacramento, California. I am over the age of  
7 eighteen years and not a party to the within cause; my business address is 915 I Street,  
8 Room 4006, Sacramento, CA 95814-2604. I am familiar with the mail collection and process  
9 of the City of Sacramento in which the mail is deposited with the United States Postal  
10 Service on the same day that it is deposited for collection and mailing, in the ordinary course  
11 of business. On the date executed below, I served the following document(s):

12 **NOTICE OF MOTION AND MOTION TO COMPEL DEFENDANT TO RESPOND TO  
13 SPECIAL INTERROGATORIES, REQUEST FOR PRODUCTION OF DOCUMENTS, SETS  
14 ONE AND REQUEST FOR MONETARY SANCTIONS**

15 ☒ **Via the United States Postal Service** by causing a true copy and/or original thereof  
16 to be placed in a sealed envelope with postage thereon fully prepaid in the  
17 designated area for outgoing mail.

18 ☐ **By Personal Delivery** on the parties in this action by causing a true copy and/or  
19 original thereof to be delivered by hand to the offices of the addressee(s).

20 ☐ **Via Facsimile** by causing such document to be served via facsimile on the parties in  
21 this action via facsimile numbers as stated on this proof of service.

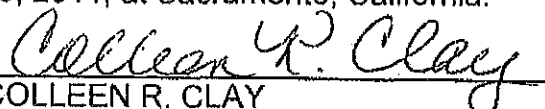
22 ☐ **Via Certified Mail, Return Receipt Requested** by causing a true copy and/or  
23 original thereof to be placed in a sealed envelope with postage thereon fully prepaid  
24 in the designated area for outgoing mail.

25 ☐ **Via FedEx Priority Overnight** by causing a true copy and/or original thereof to be  
26 placed in a sealed FedEx envelope with postage to be billed to sender and placed a  
27 FedEx outgoing mailbox.

28 addressed as follows:

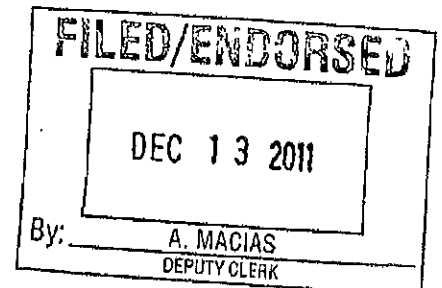
Jeffery J. Scharff, Esq.  
Law Offices of Jeffery J. Scharff  
2625 Fair Oaks Blvd., Suite 7  
Sacramento, CA 95864

I declare under penalty of perjury that the foregoing is true and correct, and that the  
declaration was executed on December 13, 2011, at Sacramento, California.

COLLEEN R. CLAY  


1 EILEEN M. TEICHERT, City Attorney (SBN 167027)  
2 KATHLEEN T. ROGAN, Senior Deputy City Attorney (SBN 186055)  
3 CITY OF SACRAMENTO  
4 Mailing: P.O. Box 1948, Sacramento, CA 95812-1948  
5 Office: 915 I Street, 4th Floor, Sacramento, CA 95814  
6 Telephone: (916) 808-5346  
7 Telecopier: (916) 808-7455

8 Attorneys for Plaintiff, CITY OF SACRAMENTO



9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF SACRAMENTO

11 CITY OF SACRAMENTO,

12 Plaintiff,

13 vs.

14 DOUGLAS DAGGS, as Trustee of the SYLVIA  
15 DELLAR SURVIVOR'S TRUST and DOES 1-  
16 100 INCLUSIVE,

17 Defendants.

Case No.: 34-2009-00067001

Filing type: Exhibits, Briefs, Receipts

Filing Name: Memorandum of Points and  
Authorities

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION TO COMPEL  
RESPONSES TO SPECIAL  
INTERROGATORIES AND REQUEST  
FOR PRODUCTION OF DOCUMENTS;  
REQUEST FOR MONETARY  
SANCTIONS IN THE AMOUNT OF  
\$1240.00

Date: January 12, 2012

Time: 2:00 p.m.

Dept: 53

Location: 800 9<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Sacramento, CA 95814

Judge: Honorable David I. Brown

Action Filed: December 21, 2009

Trial Date: Not yet set

23 Plaintiff CITY OF SACRAMENTO hereby submits the following memorandum of points and  
24 authorities in support of its motions to compel Defendant to provide responses to Plaintiff's form  
25 interrogatories, special interrogatories and requests for production of documents, and for monetary  
26 sanctions against Defendant and Defendant's attorneys.  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

I.

INTRODUCTION

A. Procedural background

This case is very simplistic. It seeks contribution from defendant DOUGLAS DAGGS, as Trustee of the SYLVIA DELLAR SURVIVOR'S TRUST (the "TRUST") towards the costs that the CITY has already paid cleaning up the TRUST's property in compliance with the directive issued by the California Regional Water Quality Control Board (the Board). The Board's order found that both the CITY and the TRUST were responsible for cleaning the property as a result of 1) the City's prior use of the property as a municipal landfill and 2) the Dellar's ownership of the land. To date, only the CITY has spent any time or money complying with that order which finally forced the CITY to initiate this lawsuit to recover some of its expenses.

The CITY's involvement with the land that is now owned by the TRUST began on December 26, 1957, when the CITY entered into duplicate agreements for the use of approximately 28 acres of real property as a landfill. The City entered into two agreements with the previous owners of the property which is now owned by the TRUST. That land which was the subject of those agreements was adjacent to the CITY'S 28<sup>th</sup> Street Landfill and bounded by "A" street on the south, the American River on the north, 23<sup>rd</sup> street on the west and 25<sup>th</sup> street on the east (the "Property"). In consideration for the use of the Property, the CITY paid the owners the amount equal to the annual taxes assessed on the Property.

The City operated a landfill on the Property from 1957 through October 1963. The agreement terminated December 31, 1963.

The TRUST purchased the Property from the prior owners on September 25, 1965, two years after the previous owners had terminated their Agreements with the City. The Trust is the current fee title owner of the Property and, with the exception of the presence of a radio transmission tower, is vacant.

On March 13, 2003, the Board submitted a letter to Defendant TRUST with a "Request to



1 Submit a Corrective Action Plan" for the Property. On March 16, 2005, the Trust filed suit against  
2 the City based upon the City's use of the Property as a landfill from 1957 to 1963.

3 On February 24, 2006, while the lawsuit was pending, the Board submitted a letter to both the  
4 CITY and the TRUST entitled "Draft Cleanup and Abatement Order for the Dellar Property Landfill.  
5 Sacramento County." The Draft Order "names the property owner, Sylvia Dellar Survivor's  
6 Trust, and former operator, City of Sacramento, as Discharger [and] requires the Discharger to  
7 address groundwater impacts from the Dellar Property." (Emphasis added.) Consequently, both  
8 the CITY and the TRUST are equally responsible for cleaning up the Trust's property.

9 In November 2009, the TRUST dismissed the lawsuit against the CITY.

10 One month later, the CITY initiated the instant lawsuit against the TRUST seeking  
11 contribution.

12 B. Ongoing negotiations

13 While the lawsuit has been pending, the parties continued to finalize a clean-up and abatement  
14 plan to comply with the Board's order. The City recently applied for and was awarded grant from the  
15 State of California, CALRECYCLE. The grant awarded the CITY \$700,000 in matching funds to be  
16 applied towards the clean-up of the Trust's property. Because the grant involves public funds, the  
17 grant manager is concerned with who will actually be doing the closure work (i.e., the City or a  
18 private third party). If the closure work is done by someone/firm other than the CITY, the manager  
19 needs confirmation that the price bid by the third party includes payment to its employees of the  
20 prevailing wage or market area wage. The contract terms required prevailing wage.

21 The work on the Property cannot continue until the CITY sees the executed contract to  
22 confirm that the prevailing wage is being paid and that the work was competitively bid. If the  
23 contract purportedly issued by the TRUST is not paying the prevailing wage then CITY will not be  
24 able to seek contribution via the grant funds. Furthermore, the grant is being awarded to the CITY not  
25 the TRUST. The reimbursement of cost is restricted to the work described in the grant application  
26 and the grant contract.

1 During the fall, the CITY has repeatedly asked the TRUST for a copy of the bid documents  
2 and the contract which it purportedly awarded. Oddly enough, the TRUST refused to provide them.  
3 It is obvious to both parties that the TRUST plans on claiming a "credit" for part, if not all, of the  
4 grant monies as an offset for what it must contribute to the CITY. Given their position, the TRUST's  
5 procrastination and refusal to provide the very documents needed to finalize the project and begin  
6 work was baffling.

7 After attempting to obtain the contract documents for months to no avail, the CITY served  
8 discovery in an effort to obtain the information. On October 25, 2011, the CITY served the TRUST  
9 by mail with Special Interrogatories set one and Request for Production of Documents, set one.  
10 (Attached to the Declaration of Kathleen T. Rogan as Exhibits A and B, respectively.) Responses to  
11 each were due on or before November 29<sup>th</sup>.

12 No extensions were sought or given and no responses have been provided.

13 The CITY sent a meet and confer letter to the TRUST's counsel on December 9<sup>th</sup> and asked  
14 that the responses be provided or that counsel contact the CITY's counsel to discuss a date when they  
15 would be provided. Surprisingly, the CITY received no response to its letter.

16 C. The Subpoena

17 In yet another attempt to obtain the needed information to confirm that the terms of the grant  
18 were being respected, the CITY subpoenaed contract documents from companies it had been  
19 informed were in contact with the TRUST. One of those companies was Kleinfelder West. When  
20 Kleinfelder failed to produce any documents pursuant to the subpoena, the CITY contacted it. The  
21 CITY learned that Kleinfelder believed that "its client's attorney, Jeff Scharff" was "taking care of"  
22 the subpoena and had already contacted plaintiff's counsel to address the subpoena. (See Declaration  
23 of Kathleen T. Rogan, ¶ 6.)

24 Mr. Scharff is counsel for the Trust, not Kleinfelder. In any event, he had not contacted  
25 CITY's counsel to discuss the subpoena and the documents had not been produced. For reasons  
26 completely unknown and baffling to the CITY, the TRUST and its counsel have refused to provide  
27

any information regarding the bid process used, the name of the contractor hired to finish the closure plan, or the contract itself. The CITY has attempted to obtain the needed information informally, through discovery, and through subpoena yet the TRUST and its counsel have, for some reason, thwarted each and every attempt of the CITY.

Last week the Water Board emailed the CITY and asked for a status on the Property and whether any work has begun on it. Because the TRUST has not responded to the CITY's discovery, the CITY did not have the information to respond substantively to that request and had to inform the Board of the recent state of affairs.

The CITY is entitled to the information sought in the discovery.

## II.

### **DEFENDANT'S RESPONSES TO THE DISCOVERY REQUESTS ARE OVERDUE, AND A MONETARY SANCTION SHOULD ISSUE FOR DEFENDANT'S MISUSE OF THE DISCOVERY PROCESS**

A motion to compel discovery responses is a proper remedy when a party fails to provide any response to discovery requests. (Code Civ. Pro. §§2030.290(b), 2031.300(b).) In addition, monetary sanctions may issue to compensate the propounding party for its reasonable expenses incurred to enforce discovery. (*Id.*, Code Civ. Pro. §2023.030(a).)

Here, Plaintiff served Defendant by U.S. Mail with special interrogatories and requests for production of documents on October 25, 2011. (Decl. Rogan at ¶2.) Pursuant to Code of Civil Procedure sections 2030.260(a) and 2031.260, responses were due within 30 days of mailing, which was November 29, 2011. However, as of the date of the filing of this motion, Defendant has failed to provide Plaintiff with *any* response to the discovery requests. (*Id.* at ¶4.) Defendant has also failed to seek an extension of time to respond to the discovery requests or offer any explanation for the delay in providing discovery responses. (*Id.* at ¶4.) Thus, an order should issue compelling Defendant to provide responses to Plaintiff's interrogatories and requests for production of documents.

In addition, the Court should issue monetary sanctions against Defendant and its attorneys of record, to compensate Plaintiff for the costs it has incurred to enforce discovery. Code of Civil

Procedure sections 2030.290(c) and 2031.300(c) provide that the court *shall* impose a monetary sanction against the losing party on a motion to compel discovery responses, unless it finds that party acted with substantial justification or other circumstances making sanctions unjust. The failure to respond to discovery requests constitutes a misuse of the discovery process. (Code Civ. Pro. §2023.010(d).) Code of Civil Procedure section 2023.030 subsection "a" provides the Court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process or any attorney advising that conduct, or both, pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. The Court may award sanctions in favor of a party who files a motion to compel discovery, even though no opposition to the motion was filed, the opposition was withdrawn, or the requested discovery was provided to the moving party after the motion was filed. (Cal. Rules of Court, R. 3.1348(a).)

Here, Defendant has engaged in misuse of the discovery process and, as demonstrated in the Declaration of Plaintiff's counsel filed herewith, has caused Plaintiff to incur costs and fees in the amount of \$1240.00 to enforce discovery. (See Rogan Decl. at ¶¶7,8.)

For these reasons, Plaintiff CITY OF SACRAMENTO respectfully requests the Court grant its motions, compel Defendant to respond to Plaintiff's discovery requests, and issue sanctions against Defendant and Defendant's attorneys of record.

### III.

### CONCLUSION

For each of the reasons set forth above, Plaintiff CITY OF SACRAMENTO respectfully requests the Court grant the Motions to compel Defendant DOUGLAS DAGGS, as Trustee of the SYLVIA DELLAR SURVIVOR'S TRUST to provide responses to Plaintiff's form and special interrogatories and requests for production of documents, and issue a monetary sanction against Defendant and Defendants attorneys to compensate Plaintiff for the costs and fees it has incurred to enforce discovery.

///

1 DATED: December 13, 2011

EILEEN M. TEICHERT,  
City Attorney

2  
3 By: 

4 KATHLEEN T. ROGAN  
5 Senior Deputy City Attorney  
6 Attorneys for Plaintiff  
7 CITY OF SACRAMENTO  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

**CASE NAME:** City of Sacramento v. Sylvia Dellar Survivor's Trust v. City of  
**COURT:** Sacramento County Superior Court  
**CASE NUMBER:** 34-2009-00067001

I declare that:

I am employed in the County of Sacramento, California. I am over the age of eighteen years and not a party to the within cause; my business address is 915 I Street, Room 4006, Sacramento, CA 95814-2604. I am familiar with the mail collection and process of the City of Sacramento in which the mail is deposited with the United States Postal Service on the same day that it is deposited for collection and mailing, in the ordinary course of business. On the date executed below, I served the following document(s):

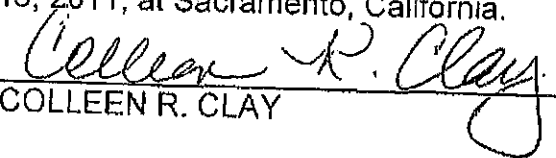
**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT MOTION TO COMPEL  
DEFENDANT TO RESPOND TO SPECIAL INTERROGATORIES, REQUEST FOR  
PRODUCTION OF DOCUMENTS, SETS ONE AND REQUEST FOR MONETARY  
SANCTIONS**

- ☒ **Via the United States Postal Service** by causing a true copy and/or original thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail.
- ☐ **By Personal Delivery** on the parties in this action by causing a true copy and/or original thereof to be delivered by hand to the offices of the addressee(s).
- ☐ **Via Facsimile** by causing such document to be served via facsimile on the parties in this action via facsimile numbers as stated on this proof of service.
- ☐ **Via Certified Mail, Return Receipt Requested** by causing a true copy and/or original thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail.
- ☐ **Via FedEx Priority Overnight** by causing a true copy and/or original thereof to be placed in a sealed FedEx envelope with postage to be billed to sender and placed a FedEx outgoing mailbox.

addressed as follows:

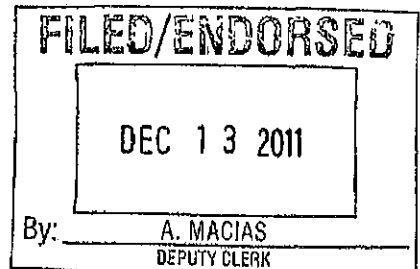
Jeffory J. Scharff, Esq.  
Law Offices of Jeffory J. Scharff  
2625 Fair Oaks Blvd., Suite 7  
Sacramento, CA 95864

I declare under penalty of perjury that the foregoing is true and correct, and that the declaration was executed on December 13, 2011, at Sacramento, California.

  
COLLEEN R. CLAY

1 EILEEN M. TEICHERT, City Attorney (SBN 167027)  
2 KATHLEEN T. ROGAN, Senior Deputy City Attorney (SBN 186055)  
3 CITY OF SACRAMENTO  
4 Mailing: P.O. Box 1948, Sacramento, CA 95812-1948  
5 Office: 915 I Street, 4th Floor, Sacramento, CA 95814  
6 Telephone: (916) 808-5346  
7 Telecopier: (916) 808-7455

8 Attorneys for the CITY OF SACRAMENTO



9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF SACRAMENTO

11 CITY OF SACRAMENTO

12 Plaintiff,

13 vs.

14 DOUGLAS DAGGS, as Trustee of the SYLVIA  
15 DELLAR SURVIVOR'S TRUST and DOES 1-  
16 100 INCLUSIVE

17 Defendants.

Case No.: 34-2009-00067001

Filing Type:

Declarations/Affidavits/Statements

Filing Name: Declaration - Other

DECLARATION OF KATHLEEN T.  
ROGAN IN SUPPORT OF CITY OF  
SACRAMENTO'S MOTION TO COMPEL  
RESPONSES TO SPECIAL  
INTERROGATORIES AND REQUEST  
FOR PRODUCTION OF DOCUMENTS

Date: January 12, 2012

Time: 2:00 p.m.

Dept: 53

Location: 800 9<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Sacramento, CA 95814

Judge: Honorable David I. Brown

Action Filed: December 21, 2009

Trial Date: Not yet set for trial

23 I, Kathleen T. Rogan, declare:

24 1. I am an attorney at law duly licensed to practice before all the Courts of the State of  
25 California and I am a Senior Deputy City Attorney for the Sacramento City Attorney's Office, the  
26 attorneys of record for the City of Sacramento (the "City"). I have personal knowledge of the facts set  
27 forth in this declaration. If called upon to do so, I could and would testify to the following facts.  
28

1           2.       Attached hereto as Exhibit "A" is a true and correct copy of the Special Interrogatories  
2 I caused to be served on Defendant.

3           3.       Attached hereto as Exhibit "B" is a true and correct copy of the Request for Production  
4 of Documents I caused to be served on Defendant.

5           4.       Attached hereto as Exhibit C is a true and correct copy of the letter I sent to Jeffory  
6 Scharff regarding the overdue discovery. He had not sought an extension of time. As of the date this  
7 motion was filed, I had no response from Mr. Scharff.

8           5.       Defendant's refusal to provide discovery responses has caused the work on the  
9 property to grind to a halt. It has also prevented Plaintiff from being able to respond meaningfully to  
10 the Water Board's inquiry for a status on the work on the property.

11          6.       On December 9<sup>th</sup>, I spoke with Vanessa Boyer at Kleinfelder West. Ms. Boyer was  
12 very annoyed with me for "calling all over the place" (I had left her two messages). Ms. Boyer told  
13 me that "their client's attorney" was "taking care of" the issue with the subpoena and she was  
14 informed he had already spoken to me. As I tried to make sense of what she was telling me, I asked if  
15 she was referring to the Dellar Trust when she referenced Kleinfelder's client; she indicated she was. I  
16 asked for the attorney's name and Ms. Boyer told me it was Jeff Scharff. Kleinfelder had not  
17 responded to the subpoena in any way, neither a motion to quash nor document production. Mr.  
18 Scharff had also not called me to discuss the subpoena.

19          7.       As a result of Defendant's failure to respond to discovery, Plaintiff has incurred  
20 expenses as follows:

- 21           • Filing fee for the instant motion: \$40.00 (recoverable and payable to the Court
- 22           pursuant to Gov. Code. §6103.5);
- 23           • Four hours of my time to research and draft the instant motion: \$800.00; and
- 24           • I anticipate spending another two hours to prepare and file a reply brief, and to attend
- 25           the hearing on the motion: \$400.00.

26          8.       I have been practicing law for fifteen (15) years; I am informed and believe the market  
27 value for my services is \$200.00 per hour. Thus the total amount of sanctions the City is seeking is  
28



1 \$1240 if this matter goes to hearing and \$840 if it is resolved prior to hearing.

2 I declare under penalty of perjury according to the laws of the State of California that the  
3 foregoing is true and correct.

4 Executed on December 13, 2011 in Sacramento, California.

5  
6   
7 KATHLEEN T. ROGAN  
8 Senior Deputy City Attorney  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT C



**OFFICE OF THE  
CITY ATTORNEY**

EILEEN M. TEICHERT  
CITY ATTORNEY  
ASSISTANT CITY ATTORNEY  
SANDRA G. TALBOTT  
SUPERVISING DEPUTY CITY ATTORNEYS  
GERALD C. HICKS  
GUSTAVO L. MARTINEZ  
MATTHEW D. RUYAK  
BRETT M. WITTER

**CITY OF SACRAMENTO  
CALIFORNIA**

915 I STREET, FOURTH FLOOR  
SACRAMENTO, CA 95814-2604  
PH 916-808-5346  
FAX 916-808-7455

MAILING ADDRESS:  
P.O. BOX 1948  
SACRAMENTO, CA 95812-1948

DEPUTY CITY ATTORNEYS  
MICHAEL J. BENNER  
KOURTNEY BURDICK  
JOSEPH P. CERULLO  
SHERI M. CHAPMAN  
SARI MYERS DIERKING  
MICHAEL A. FRY  
PAUL A. GALE  
SABINA D. GILBERT  
SUSAN E. HAYES  
JEFFREY C. HEEREN  
STEVEN Y. ITAGAKI  
MARCOS A. KROPP  
GARY P. LINDSEY, JR.  
SHERYL N. PATTERSON  
JOE ROBINSON  
KATHLEEN T. ROGAN  
JANETH D. SAN PEDRO  
MICHAEL T. SPARKS  
CHANCE L. TRIMM  
LAN WANG  
DAVID S. WOMACK

December 7, 2011

*Sent via facsimile*

Jeffory J. Scharff, Esq.  
Law Offices of Jeffory J. Scharff  
2625 Fair Oaks Blvd., Suite 7  
Sacramento, CA 95864

Re: City of Sacramento v. Sylvia Dellar Survivor's Trust v. City of  
Sacramento Superior Court Case No. 34-2009-00067001

Dear Mr. Scharff:

The City served defendant with a demand for production of documents and special interrogatories on October 25, 2011. Both were due on November 29<sup>th</sup> and are now one week overdue. As you know, the City has been asking for the contract documents for several months to no avail. The Water Board has recently asked for a status and we were unable to provide one because of the missing information.

If you need more time to respond, please contact me so that we can work something out. Otherwise, please forward the responses and the documents at your earliest convenience.

Very truly yours,

EILEEN M. TEICHERT  
City Attorney

  
KATHLEEN T. ROGAN  
Senior Deputy City Attorney

KTR/crc

1 EILEEN M. TEICHERT, City Attorney (SBN 167027)  
2 KATHLEEN T. ROGAN, Senior Deputy City Attorney (SBN 186055)  
3 CITY OF SACRAMENTO  
4 400 Capitol Mall, Suite 1650  
5 Sacramento, CA 95814  
6 Telephone: (916) 808-5346  
7 Telecopier: (916) 808-7455

8 Attorneys for the CITY OF SACRAMENTO

9 SUPERIOR COURT OF CALIFORNIA  
10 COUNTY OF SACRAMENTO

11 CITY OF SACRAMENTO

12 Plaintiff,

13 vs.

14 DOUGLAS DAGGS, as Trustee of the SYLVIA  
15 DELLAR SURVIVOR'S TRUST and DOES 1-  
16 100 INCLUSIVE

17 Defendants.

Case No.: 34-2009-00067001

*Filing type: Exhibits, Briefs, Receipts*

*Filing Name: Memorandum of Points and  
Authorities*

**REPLY BRIEF IN SUPPORT OF CITY'S  
MOTION TO COMPEL RESPONSES TO  
SPECIAL INTERROGATORIES AND  
REQUEST FOR PRODUCTION OF  
DOCUMENTS**

Date: January 12, 2012

Time: 2:00 p.m.

Dept: 53

Location: 800 9<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Sacramento, CA 95814

Judge: Honorable David I. Brown

Action Filed: December 21, 2009

Trial Date: Not yet set

22 I.

23 **DEFENDANT MUST BE ORDERED TO PROVIDE RESPONSES WITHOUT OBJECTIONS**

24  
25 After receiving no response to its meet and confer attempts, the City was forced to file a  
26 motion to compel responses to its special interrogatories and document demand. After the motion  
27 was filed, on the day the opposition was due, defendant finally served verified responses - with  
28

1 objections.

2 The interrogatory responses asserted numerous prefatory objections. (See Exhibit D attached  
3 to the Declaration of Kathleen T. Rogan.) The response to the request for production of documents  
4 included five paragraphs of prefatory objections *in addition* to objections asserted in response to each  
5 of the four specific document demands. (See Exhibit E attached to the Declaration of Kathleen T.  
6 Rogan.)

7 Defendant's responses to the City's discovery were due on November 29, 2011. (See Exhibits  
8 A and B, attached to the Declaration of Kathleen T. Rogan and filed concurrently with the moving  
9 papers.) Instead, they were not served until *December 29<sup>th</sup>*, one month late. Untimely responses  
10 result in a waiver of all objections. (Code Civil Procedure section 2030.290<sup>1</sup>(a); see *Leach v. Sup. Ct.*  
11 (1980) 111 CA3d 902, 9-5-906.)

12 Defendant must be ordered to provide responses without objections.

## 13 II.

### 14 **DEFENDANT MUST BE ORDERED TO PROVIDE RESPONSES IN COMPLIANCE WITH** 15 **THE CODE OF CIVIL PROCEDURE SECTION 2031.230, and 2031.280**

#### 16 A. Violation of section 2031.230

17 DAGGS' responses to request numbers two and four state: "No such documents exist." (See  
18 Exhibit D, 4:1,18.)

19 Section 2031.230 directs that:

20 A representation of inability to comply with a particular demand for inspection... shall  
21 affirm that a diligent search and a reasonable inquiry has been made in an effort to  
22 comply with that demand. This statement shall also specify whether the inability to  
23 comply is because the particular item or category has never existed, has been  
24 destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the  
25 possession, custody, or control of the responding party. The statement shall set forth  
26 the name and address of any natural person or organization known or believed by that  
27 party to have possession, custody, or control of that item or category of item.  
28 (Emphasis added.)

---

26 <sup>1</sup> All code references are to the Code of Civil Procedure unless otherwise specifically stated.  
27  
28

1  
2 Defendant's four word statement that "no such documents exist" abysmally fails to satisfy the  
3 statutory requirement. The City is entitled to an appropriate response which complies with the law.

4 B. Violation of section 2031.280

5 Section 2031.280(a) instructs that any documents produced in response to a demand for  
6 inspection "shall either be produced as they are kept in the usual course of business, or be organized  
7 and labeled to correspond with the categories in the demand."

8 The documents and binders produced do not reflect in response to which request they are  
9 being produced nor is it clear that they were produced as they are kept in the usual course of business.  
10 Given the current state of the responses and production, it is unclear The City is not seeking  
11 anything more than what the Discovery Act allows. The City is entitled to answers that comply with  
12 the law and are unambiguous.

13 III.

14 CONCLUSION

15 For the foregoing reasons as well as those provided in the initial moving papers, the City  
16 respectfully requests that this court grant the City's motion to compel and order defendant to provide:  
17 1) verified responses to the special interrogatories, without objections; 2) verified responses to the  
18 document demand without objections and compliant with the requirements of Code of Civil  
19 Procedure sections 2031.230; and 3) a document production which complies with section 2031.280.

20 DATED: January 4, 2012

EILEEN M. TEICHERT,  
City Attorney

21  
22 By: 

23 KATHLEEN T. ROGAN  
24 Senior Deputy City Attorney

25 Attorneys for the  
26 CITY OF SACRAMENTO  
27  
28

**PROOF OF SERVICE**

**CASE NAME:** City of Sacramento v. Sylvia Dellar Survivor's Trust v. City of  
**COURT:** Sacramento County Superior Court  
**CASE NUMBER:** 34-2009-00067001

I declare that:

I am employed in the County of Sacramento, California. I am over the age of eighteen years and not a party to the within cause; my business address is 915 I Street, Room 4006, Sacramento, CA 95814-2604. I am familiar with the mail collection and process of the City of Sacramento in which the mail is deposited with the United States Postal Service on the same day that it is deposited for collection and mailing, in the ordinary course of business. On the date executed below, I served the following document(s):

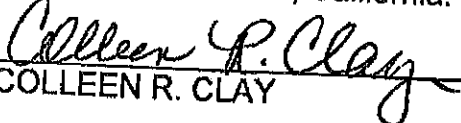
**REPLY BRIEF IN SUPPORT OF CITY'S MOTION TO COMPEL RESPONSES TO  
SPECIAL INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS**

- ☒ **Via the United States Postal Service** by causing a true copy and/or original thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail.
- ☐ **By Personal Delivery** on the parties in this action by causing a true copy and/or original thereof to be delivered by hand to the offices of the addressee(s).
- ☐ **Via Facsimile** by causing such document to be served via facsimile on the parties in this action via facsimile numbers as stated on this proof of service.
- ☐ **Via Certified Mail, Return Receipt Requested** by causing a true copy and/or original thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail.
- ☐ **Via FedEx Priority Overnight** by causing a true copy and/or original thereof to be placed in a sealed FedEx envelope with postage to be billed to sender and placed a FedEx outgoing mailbox.

addressed as follows:

Jeffory J. Scharff, Esq.  
Law Offices of Jeffory J. Scharff  
2625 Fair Oaks Blvd., Suite 7  
Sacramento, CA 95864

I declare under penalty of perjury that the foregoing is true and correct, and that the declaration was executed on January 4, 2012, at Sacramento, California.

  
COLLEEN R. CLAY

FILED  
ENDORSED

EILEEN M. TEICHERT, City Attorney (SBN 167027)  
KATHLEEN T. ROGAN, Senior Deputy City Attorney (SBN 186055)  
CITY OF SACRAMENTO  
400 Capitol Mall, Suite 1650  
Sacramento, CA 95814  
Telephone: (916) 808-5346  
Telecopier: (916) 808-7455

SACRAMENTO COURTS  
DEPT. #53 #54

Attorneys for the CITY OF SACRAMENTO

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

CITY OF SACRAMENTO

Plaintiff,

vs.

DOUGLAS DAGGS, as Trustee of the SYLVIA  
DELLAR SURVIVOR'S TRUST and DOES 1-  
100 INCLUSIVE

Defendants.

Case No.: 34-2009-00067001

Case No.: 34-2009-00067001

*Filing Type:*

*Declarations/Affidavits/Statements*

*Filing Name: Declaration - Other*

**DECLARATION OF KATHLEEN T.  
ROGAN IN SUPPORT OF CITY OF  
SACRAMENTO'S REPLY BRIEF**

Date: January 12, 2012

Time: 2:00 p.m.

Dept: 53

Location: 800 9<sup>th</sup> Street, 3<sup>rd</sup> Floor  
Sacramento, CA 95814

Judge: Honorable David I. Brown

Action Filed: December 21, 2009

Trial Date: Not yet set for trial

I, Kathleen T. Rogan, declare:

1. I am an attorney at law duly licensed to practice before all the Courts of the State of California and I am a Senior Deputy City Attorney for the Sacramento City Attorney's Office, the attorneys of record for the City of Sacramento (the "City"). I have personal knowledge of the facts set forth in this declaration. If called upon to do so, I could and would testify to the following facts.

///



2. Attached hereto as Exhibit "D" is a true and correct copy of defendant's responses to the City's Special Interrogatories.

3. Attached hereto as Exhibit "E" is a true and correct copy of defendant's response to the City's Request for Production of Documents.

I declare under penalty of perjury according to the laws of the State of California that the foregoing is true and correct.

Executed on January 4, 2012 in Sacramento, California.

  
KATHLEEN T. ROGAN  
Senior Deputy City Attorney

**EXHIBIT D**

1 JEFFORY J. SCHARFF, Esq (SBN 137620)  
2 2625 Fair Oaks Blvd., Suite 7  
3 Sacramento, CA 95864  
4 Telephone: (916) 485-5700  
5 Facsimile: (916) 485-5912  
6 [jjsesq@scharff.us](mailto:jjsesq@scharff.us)

7 Attorney for Defendant/Cross-Complainant  
8 DOUGLAS DAGGS as Trustee of the  
9 SYLVIA DELLAR SURVIVOR'S TRUST  
10

11 **SUPERIOR COURT OF CALIFORNIA**  
12 **COUNTY OF SACRAMENTO**

13 CITY OF SACRAMENTO,

14 Plaintiff,

15 v.

16 DOUGLAS DAGGS as Trustee of the  
17 SYLVIA DELLAR SURVIVOR'S TRUST,  
18 and DOES 1-100 INCLUSIVE,

19 Defendants.

CASE NO. 34-2009-00067001

UNLIMITED CIVIL

RESPONSE OF DOUGLAS M. DAGGS,  
AS TRUSTEE OF THE SYLVIA DELLAR  
SURVIVOR'S TRUST TO CITY OF  
SACRAMENTO'S SPECIAL  
INTERROGATORIES, SET NO. ONE

Action Filed: December 21, 2009  
Trial Date: None Set

20 AND RELATED CROSS-ACTION.

21 REQUESTING PARTY: CITY OF SACRAMENTO

22 RESPONDING PARTY: DOUGLAS M. DAGGS, AS TRUSTEE OF THE SYLVIA  
23 DELLAR SURVIVOR'S TRUST

24 SET NO.: ONE

25 Pursuant to Code of Civil Procedure section 2030.010 et seq. defendant/cross-  
26 complainant DOUGLAS M. DAGGS, AS TRUSTEE OF THE SYLVIA DELLAR  
27 SURVIVOR'S TRUST ("DAGGS") responds to the CITY OF SACRAMENTO'S SPECIAL  
28 INTERROGATORIES, SET NO. ONE, as follows:

PRELIMINARY STATEMENT AND RESERVATIONS

1. DAGGS has not completed the investigation or discovery relating to this case.

1 The following responses, therefore, are based on and are necessarily limited by, the records  
2 available to DAGGS. Further investigation and discovery may uncover additional documents not  
3 herein provided and/or currently unavailable to plaintiff, or may illuminate the significance of  
4 documents now available to DAGGS. Accordingly, DAGGS reserves the right to produce any  
5 documents not yet discovered, or whose relevance is subsequently identified.

6 2. DAGGS is responding to the interrogatories as he interprets and understands  
7 them. If propounding party subsequently asserts an interpretation of the interrogatories that  
8 differs from the understanding of DAGGS, DAGGS reserves the right to supplement objections  
9 and/or responses.

10 3. Nothing herein shall be construed as an admission or waiver by DAGGS of: (i) his  
11 rights respecting admissibility, competency, relevance, privilege, materiality and authenticity of  
12 the information provided in the responses, documents identified in the responses or the subject  
13 matter thereof; (ii) his objections due to vagueness, ambiguity, or undue burden; and, (iii) his  
14 right to object to the use of information provided in the responses, documents identified in the  
15 responses or the subject matter contained therein during a subsequent proceeding, including the  
16 trial of this or any other litigation.

17 4. To the extent DAGGS inadvertently produces a document or reveals information  
18 that arguably may be protected from discovery under the attorney client privilege or the work  
19 product doctrine, such inadvertent disclosure is not intended to and shall not constitute a waiver  
20 of any such privilege.

#### 21 GENERAL OBJECTIONS

22 5. DAGGS objects to each and every request to the extent it requests information or  
23 documents which are privileged against disclosure pursuant to any lawfully recognized privilege  
24 or immunity from disclosure including but not limited to, attorney-client privilege, the attorney  
25 work product doctrine, the self critical analysis privilege, and the joint defense privilege.

26 6. DAGGS objects to each interrogatory to the extent it purports to impose upon  
27 responding party obligations greater than those imposed by the California Code of Civil  
28 Procedure.

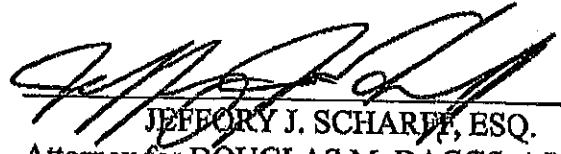


1 American River on the north, 23<sup>rd</sup> street on the west and 25<sup>th</sup> street on the east which is the  
2 subject of this litigation).

3 **RESPONSE TO INTERROGATORY NO. 1:**

4 The solicitation for competitive bids for the cleanup and/or closure plan of the  
5 PROPERTY was not advertised in any publications.

6  
7 Dated: December 29, 2011

  
JEFFERY J. SCHARDT, ESQ.  
Attorney for DOUGLAS M. DAGGS, AS  
TRUSTEE OF THE SYLVIA DELLAR  
SURVIVOR'S TRUST

VERIFICATION

I, DOUGLAS M. DAGGS, AS TRUSTEE OF THE SYLVIA DELLAR SURVIVOR'S TRUST, am the defendant/cross-complainant in this proceeding and have read this RESPONSE TO CITY OF SACRAMENT'S SPECIAL INTERROGATORIES, SET NO. ONE. I declare under penalty of perjury under the laws of the State of California that the same is true of my own knowledge, except as to those matters stated therein on information and belief, and as to those matters, I believe them to be true.

Dated:

12-29-11



DOUGLAS M. DAGGS, AS TRUSTEE OF  
THE SYLVIA DELLAR SURVIVOR'S TRUST

ORIGINAL TO FOLLOW

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I, Karen C. Traugh, declare:

I am a citizen of the United States over the age of eighteen years and not a party to nor interested in the within entitled cause. I am an employee of Jeffory J. Scharff, Esq., located at 2625 Fair Oaks Boulevard, Suite 7, Sacramento, CA 95864.

**RESPONSE OF DOUGLAS M. DAGGS, AS TRUSTEE OF THE SYLVIA DELLAR SURVIVOR'S TRUST, TO CITY OF SACRAMENTO'S SPECIAL INTERROGATORIES, SET NO. ONE**

On December 29, 2011, I served the attached, and all exhibits thereto:

\_\_\_\_\_  
BY U.S. MAIL [C.C.P. §1013(a)] by enclosing one copy thereof in a sealed envelope, with postage thereon fully prepaid. I am readily familiar with this firm's practice for the collection and processing of correspondence for mailing with the United States Postal Service, and that said correspondence is deposited with the United States Postal Service on the same day in the ordinary course of business. Said correspondence was addressed as set forth below.

\_\_\_\_\_  
BY U.S. MAIL [C.C.P. §1013(a)] by enclosing one copy thereof in a sealed envelope, with postage thereon fully prepaid, and depositing with the United States Postal Service for mailing via certified mail, return receipt requested, upon the person(s) or the office of the person(s) at the address listed below.

X  
\_\_\_\_\_  
BY PERSONAL SERVICE [C.C.P. §1011] by personally delivering one copy thereof to the person and at the address set forth below.

\_\_\_\_\_  
by causing personal delivery of one copy thereof upon the person or the office of the person at the address listed below.

\_\_\_\_\_  
BY OVERNIGHT DELIVERY [C.C.P. §1013(d)] by placing a true copy thereof enclosed in a sealed envelope with delivery fees provided for delivery via Federal Express (Priority Overnight) upon the person or the office of the person at the address listed below.

\_\_\_\_\_  
BY FACSIMILE [C.C.P. §1013(e)] by sending a true copy via facsimile transmission (by use of facsimile machine telephone number 916-660-9554) of the above described document(s) to the interested parties, at the facsimile numbers listed below. The facsimile machine I used complied with California Rules of Court, Rule 2004, and no error was reported by the machine.

\_\_\_\_\_  
BY ELECTRONIC SERVICE [C.C.P. §1010.6] by electronically mailing a true and correct copy through Scharff, Brady & Vinding's electronic mail system to the e-mail address(es) set forth below, or as stated on the attached service list per agreement in accordance with C.C.P. §1010.6.

///

///

///



1 **PARTIES SERVED:**

2 Kathleen Rogan  
3 Senior Deputy City Attorney  
4 City of Sacramento  
5 P. O. Box 1948  
6 Sacramento, CA 95812-1948

Attorneys for Plaintiff  
City of Sacramento

7 I declare, under penalty of perjury under the laws of the State of California, that the  
8 foregoing is true and correct. Executed at Sacramento, California, on December 29, 2011.

9 Karen C. Traugh

**EXHIBIT E**

1 JEFFORY J. SCHARFF, Esq (SBN 137620)  
2 2625 Fair Oaks Blvd., Suite 7  
3 Sacramento, CA 95864  
4 Telephone: (916) 485-5700  
5 Facsimile: (916) 485-5912  
6 [jjsesq@scharff.us](mailto:jjsesq@scharff.us)

7 Attorney for Defendant/Cross-Complainant  
8 DOUGLAS DAGGS as Trustee of the  
9 SYLVIA DELLAR SURVIVOR'S TRUST

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF SACRAMENTO**

CITY OF SACRAMENTO,

Plaintiff,

v.

DOUGLAS DAGGS as Trustee of the  
SYLVIA DELLAR SURVIVOR'S TRUST,  
and DOES 1-100 INCLUSIVE,

Defendants.

AND RELATED CROSS-ACTION.

CASE NO. 34-2009-00067001

UNLIMITED CIVIL

RESPONSE OF DOUGLAS M. DAGGS,  
AS TRUSTEE OF THE SYLVIA DELLAR  
SURVIVOR'S TRUST TO CITY OF  
SACRAMENTO'S REQUEST FOR  
PRODUCTION, INSPECTION AND  
COPYING OF DOCUMENTS, SET NO.  
ONE

Action Filed: December 21, 2009  
Trial Date: None Set

REQUESTING PARTY: CITY OF SACRAMENTO

RESPONDING PARTY: DOUGLAS M. DAGGS, AS TRUSTEE OF THE SYLVIA  
DELLAR SURVIVOR'S TRUST

SET NO.: ONE

Pursuant to Code of Civil Procedure section 2031.010 et seq. DOUGLAS M. DAGGS,  
AS TRUSTEE OF THE SYLVIA DELLAR SURVIVOR'S TRUST ("DAGGS") responds to the  
CITY OF SACRAMENTO'S REQUEST FOR PRODUCTION, INSPECTION AND COPYING  
OF DOCUMENTS, SET NO. ONE, and produces documents responsive to the request that are  
in its possession, custody and control.

These responses are based upon information presently known to DAGGS. Discovery is

1 continuing, and therefore, DAGGS reserves the right to serve supplemental responses if and  
2 when additional information is discovered.

### 3 OBJECTIONS

4 1. To the extent any of these requests may be construed as calling for information  
5 which is subject to a claim of privilege, including, without limitation, the attorney/client  
6 privilege, the attorney work product doctrine, the right to privacy under common law or the  
7 California Constitution, the reporter's/editor's privileges pursuant to Article I, Section 2, of the  
8 California Constitution and the First Amendment of the United States Constitution, the shield  
9 law pursuant to California Evidence Code §1070 and the California Constitution, or any  
10 information or documents which implicate Article I, Section 15, of the California Constitution,  
11 the Fifth Amendment of the United States Constitution, and California Evidence Code §940,  
12 Defendant hereby asserts such doctrine and privileges and objects to such request on that basis.

13 2. DAGGS has not yet completed his review and investigation of the facts relating to  
14 this case, and therefore, any and all responses to these requests are necessarily based on  
15 information presently known to, in the possession of, or identified by DAGGS, and the  
16 information provided pursuant to these requests are provided without prejudice to DAGGS' right  
17 to submit information subsequently discovered as such become known. DAGGS anticipates that  
18 as investigation and discovery in this matter are completed and trial preparation begins, it is  
19 possible that additional information may become known, which in turn may require additions to  
20 or changes in the responses provided herein. These responses are made in a good faith effort to  
21 supply as much information as is presently known to defendant. DAGGS reserves the right to  
22 provide such documents and introduce into evidence at or before trial any subsequently  
23 discovered information.

24 3. In responding to the requests herein, DAGGS does not concede the relevancy or  
25 materiality of any request or the subject to which such request refers. DAGGS' responses to these  
26 requests are made expressly subject to, and without in any way waiving or intending to waive,  
27 any objections as to competency, relevancy, materiality or privilege, as evidence or for any other  
28 purpose, of any of the information referred to or of the responses given herein, or of the subject

1 matter thereof, in any proceeding, including trial of this action.

2 4. DAGGS will make reasonable efforts to respond to any request, to the extent it  
3 has not been objected to, as Defendant understands and interprets the requests. If Plaintiff  
4 subsequently asserts an interpretation of the request which differs from that of DAGGS, DAGGS  
5 reserves the right to object and to supplement its response(s).

6 5. Without waiving the foregoing objections, DAGGS will respond to non-privileged  
7 and relevant requests.

8 **DOCUMENTS TO BE IDENTIFIED AND PRODUCED**

9 **REQUEST NO. 1:**

10 Provide copies of all documents which comprise the competitive bid solicitation for the  
11 cleanup and/or closure plan for the Sylvia Dellar Survivor's Trust's (hereafter, "TRUST")  
12 property located in Sacramento bounded by "A" street on the south, the American River on the  
13 north, 23<sup>rd</sup> street on the west and 25<sup>th</sup> street on the east which is the subject of this litigation  
14 (hereafter "PROPERTY").

15 **RESPONSE TO REQUEST NO. 1:**

16 DAGGS objects to this request for production on the grounds that it calls for production  
17 of documents subject to the attorney/client privilege and/or attorney work product doctrine.

18 Without waiving the foregoing objection, DAGGS responds as follows:

19 DAGGS will produce such documents responsive to this request as are within his  
20 possession, custody or control.

21 **REQUEST NO. 2:**

22 Provide any and all invoices, bills, cancelled checks or evidence of payments made by on  
23 or behalf of the TRUST to Western Engineering for work done regarding the PROPERTY.

24 **RESPONSE TO REQUEST NO. 2:**

25 DAGGS objects to this request for production on the grounds that it calls for production  
26 of documents subject to the attorney/client privilege and/or attorney work product doctrine.

27 Without waiving the foregoing objection, DAGGS responds as follows:

28

1 No such documents exist.

2 **REQUEST NO. 3:**

3 Provide all documents received in response to the TRUST'S solicitation of competitive  
4 bids for the cleanup and/or closure plan for the PROPERTY.

5 **RESPONSE TO REQUEST NO. 3:**

6 DAGGS objects to this request for production on the grounds that it calls for production  
7 of documents subject to the attorney/client privilege and/or attorney work product doctrine.

8 Without waiving the foregoing objection, DAGGS responds as follows:

9 DAGGS will produce such documents responsive to this request as are within his  
10 possession, custody or control.

11 **REQUEST NO. 4:**

12 Provide copies of each and every advertisement you placed to solicit bids for the cleanup  
13 and/or closure plan for the PROPERTY.


14 **RESPONSE TO REQUEST NO. 4:**

15 DAGGS objects to this request for production on the grounds that it calls for production  
16 of documents subject to the attorney/client privilege and/or attorney work product doctrine.

17 Without waiving the foregoing objection, DAGGS responds as follows:

18 No such documents exist.

19 Dated: December 29, 2011

  
JEFFORY J. SCHARFF, ESQ.  
Attorney for DOUGLAS M. DAGGS, AS  
TRUSTEE OF THE SYLVIA DELLAR  
SURVIVOR'S TRUST

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

VERIFICATION

I, DOUGLAS M. DAGGS, AS TRUSTEE OF THE SYLVIA DELLAR SURVIVOR'S TRUST, am the defendant/cross-complainant in this proceeding and have read this RESPONSE TO CITY OF SACRAMENT'S SPECIAL INTERROGATORIES, SET NO. ONE. I declare under penalty of perjury under the laws of the State of California that the same is true of my own knowledge, except as to those matters stated therein on information and belief, and as to those matters, I believe them to be true.

Dated: 12-29-11

  
DOUGLAS M. DAGGS, AS TRUSTEE OF  
THE SYLVIA DELLAR SURVIVOR'S TRUST

ORIGINAL TO FOLLOW

1 **PROOF OF SERVICE**

2 I, Karen C. Traugh, declare:

3 I am a citizen of the United States over the age of eighteen years and not a party to nor  
4 interested in the within entitled cause. I am an employee of Jeffory J. Scharff, Esq., located at  
5 2625 Fair Oaks Boulevard, Suite 7, Sacramento, CA 95864.

6 **RESPONSE OF DOUGLAS M. DAGGS, AS TRUSTEE OF THE SYLVIA**  
7 **DELLAR SURVIVOR'S TRUST, TO CITY OF SACRAMENTO'S REQUEST**  
8 **FOR PRODUCTION, INSPECTION AND COPYING OF DOCUMENTS, SET**  
9 **NO. ONE**

10 On December 29, 2011, I served the attached, and all exhibits thereto:

11            **BY U.S. MAIL [C.C.P. §1013(a)]** by enclosing one copy thereof in a sealed  
12 envelope, with postage thereon fully prepaid. I am readily familiar with this firm's  
13 practice for the collection and processing of correspondence for mailing with the  
14 United States Postal Service, and that said correspondence is deposited with the  
15 United States Postal Service on the same day in the ordinary course of business.  
16 Said correspondence was addressed as set forth below.

17            **BY U.S. MAIL [C.C.P. §1013(a)]** by enclosing one copy thereof in a sealed  
18 envelope, with postage thereon fully prepaid, and depositing with the United  
19 States Postal Service for mailing via certified mail, return receipt requested, upon  
20 the person(s) or the office of the person(s) at the address listed below.

21   X   **BY PERSONAL SERVICE [C.C.P. §1011]** by personally delivering one copy  
22 thereof to the person and at the address set forth below.

23            by causing personal delivery of one copy thereof upon the person or the office of  
24 the person at the address listed below.

25            **BY OVERNIGHT DELIVERY [C.C.P. §1013(d)]** by placing a true copy thereof  
26 enclosed in a sealed envelope with delivery fees provided for delivery via Federal  
27 Express (Priority Overnight) upon the person or the office of the person at the  
28 address listed below.

           **BY FACSIMILE [C.C.P. §1013(e)]** by sending a true copy via facsimile  
transmission (by use of facsimile machine telephone number 916-660-9554) of  
the above described document(s) to the interested parties, at the facsimile numbers  
listed below. The facsimile machine I used complied with California Rules of  
Court, Rule 2004, and no error was reported by the machine.

           **BY ELECTRONIC SERVICE [C.C.P. §1010.6]** by electronically mailing a true  
and correct copy through Scharff, Brady & Vinding's electronic mail system to  
the e-mail address(es) set forth below, or as stated on the attached service list per  
agreement in accordance with C.C.P. §1010.6.

27 ///

28 ///



1 **PARTIES SERVED:**

2 Kathleen Rogan  
3 Senior Deputy City Attorney  
4 City of Sacramento  
5 P. O. Box 1948  
6 Sacramento, CA 95812-1948

Attorneys for Plaintiff  
City of Sacramento

7 I declare, under penalty of perjury under the laws of the State of California, that the  
8 foregoing is true and correct. Executed at Sacramento, California, on December 29, 2011.

9 Karen C. Traugh

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

**CASE NAME:** City of Sacramento v. Sylvia Dellar Survivor's Trust v. City of  
**COURT:** Sacramento County Superior Court  
**CASE NUMBER:** 34-2009-00067001

I declare that:

I am employed in the County of Sacramento, California. I am over the age of eighteen years and not a party to the within cause; my business address is 915 I Street, Room 4006, Sacramento, CA 95814-2604. I am familiar with the mail collection and process of the City of Sacramento in which the mail is deposited with the United States Postal Service on the same day that it is deposited for collection and mailing, in the ordinary course of business. On the date executed below, I served the following document(s):

**DECLARATION OF KATHLEEN T. ROGAN IN SUPPORT OF CITY OF SACRAMENTO'S  
REPLY BRIEF**

- ☒ **Via the United States Postal Service** by causing a true copy and/or original thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail.
- ☐ **By Personal Delivery** on the parties in this action by causing a true copy and/or original thereof to be delivered by hand to the offices of the addressee(s).
- ☐ **Via Facsimile** by causing such document to be served via facsimile on the parties in this action via facsimile numbers as stated on this proof of service.
- ☐ **Via Certified Mail, Return Receipt Requested** by causing a true copy and/or original thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail.
- ☐ **Via FedEx Priority Overnight** by causing a true copy and/or original thereof to be placed in a sealed FedEx envelope with postage to be billed to sender and placed a FedEx outgoing mailbox.

addressed as follows:

Jeffery J. Scharff, Esq.  
Law Offices of Jeffery J. Scharff  
2625 Fair Oaks Blvd., Suite 7  
Sacramento, CA 95864

I declare under penalty of perjury that the foregoing is true and correct, and that the declaration was executed on January 4, 2012, at Sacramento, California.

  
COLLEEN R. CLAY

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO  
GORDON D SCHABER COURTHOUSE

MINUTE ORDER

DATE: 01/12/2012

TIME: 02:00:00 PM

DEPT: 53

JUDICIAL OFFICER PRESIDING: David Brown

CLERK: E. Brown, J. Bell

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **34-2009-00067001-CU-OR-GDS** CASE INIT.DATE: 12/21/2009

CASE TITLE: **City of Sacramento vs. Sylvia Dellar Survivor's Trust**

CASE CATEGORY: Civil - Unlimited

---

EVENT ID/DOCUMENT ID: ,7924884

**EVENT TYPE:** Motion to Compel - Other - Civil Law and Motion

**MOVING PARTY:** City of Sacramento

**CAUSAL DOCUMENT/DATE FILED:** Motion to Compel - Other Responses to Special Interrogatories and Production of Documents, 12/13/2011

---

**APPEARANCES**

---

**Nature of Proceeding:** Motion to Compel 1. Special Interrogatories 2. Production of Documents

**TENTATIVE RULING**

Plaintiff's Motion to Compel Defendant to provide Answers to Special Interrogatories and Requests for Production (Sets One) is unopposed and is GRANTED. The request for imposition of sanctions is DENIED, as the motion is not opposed. Code Civil Procedure sections 2030.290(c), 2031.300(c), 2023.030(a).

No monetary sanctions are imposed for the motion to compel responses to Interrogatories or Request for Production. Although California Rules of Court, Rule 3.1030(c) purports to authorize sanctions if the motion is unopposed, the Court declines to do so, as the specific statutes governing this discovery authorize sanctions only if the motion was unsuccessfully made or opposed. Any order imposing sanctions under the C.R.C. must conform to the conditions of one or more of the statutes authorizing sanctions. *Trans-Action Commercial Investors, Ltd. v. Firmaterr, Inc.* (1997) 60 Cal.App.4th 352, 355. However, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions on that basis. *Laguna Auto Body v. Farmers Insurance Exchange* (1991) 231 Cal. App. 3d 481.

In reply, plaintiff declares that the defendant served responses to the discovery on the date the opposition papers were due. The discovery responses contained objections, although they were untimely served, therefore the right to object had been waived.

Defendant shall provide counsel for the Plaintiff with verified, written amended answers to the Special Interrogatories, without objections and verified, written Amended Responses, together with all documents responsive to Request for Production (Set One) in his possession, custody or control, not later than Monday, Jan 23, 2012.

This minute order is effective immediately. No formal order nor further notice is required, the tentative ruling providing sufficient notice.

---

DATE: 01/12/2012

DEPT: 53

MINUTE ORDER

Page 1  
Calendar No.

**COURT RULING**

There being no request for oral argument, the Court affirmed the tentative ruling.





DEPARTMENT OF  
GENERAL SERVICES

CITY OF SACRAMENTO  
CALIFORNIA

2812 Meadowview Road  
Sacramento, CA 95832

SOLID WASTE DIVISION

Phone: 916-808-4900  
Fax: 916-399-0263

January 18, 2012

FISH AND WILDLIFE SERVICE  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825  
Attention: Kellie Berry, Division Chief, Sacramento Valley Division

REFERENCE: DELLAR LANDFILL CLOSURE AND AVOIDANCE OF ELDER BERRY BUSHES ON SITE.

Dear: Ms. Berry:

On June 6, 2008, the Central Valley Regional Water Quality Control Board (Water Board) served a Corrective Action Order (CAO) on the Sylvia Dellar Survivor's Trust and the City of Sacramento. In response to the Water Board's CAO, the City prepared a closure design. Prior to awarding a construction contract for closure of the Dellar property, Elder Berry bushes were observed on the site. In May 2010 a Biological Survey confirmed the presence of Elder Berry bushes and Elder Berry Beetles. In response, the Dellar Trust, as property owner and co-discharger, prepared a closure plan to avoid taking any Elder Berry bushes. To avoid disturbing the root system, the plan calls for keeping the Elder Berry bushes in place and only working around them by hand - no heavy equipment will be used to move or compact dirt near the Elder Berry bushes. That plan has been presented to and approved by the Water Board.

Please contact me if you have any questions.

Sincerely,

Marty Strauss  
Integrated Waste Planning Superintendent.

Cc. Jeff Scharff, Attorney for Dellar Survivor's Trust  
Jerry Hicks, City of Sacramento, Attorney's Office  
Steve Harriman, Integrated Waste General Manager  
Reina Schwartz, Director, General Services Department  
Todd Del Frate, Central Valley Regional Water Quality Control Board